

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRACY LYNN CAMPBELL,

Plaintiff,

v.

CAROLYN W. COLVIN, Commissioner
of Social Security Administration,
Defendant.

NO. 2:13-cv-03112-SAB

**ORDER DENYING
PLAINTIFF'S MOTON FOR
SUMMARY JUDGMENT;
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are Plaintiff's Motion for Summary Judgment, ECF No. 15, and Defendant's Motion for Summary Judgment. ECF No. 18. The motions were heard without oral argument.

I. Jurisdiction

On March 26, 2010, Plaintiff filed a supplemental security income ("SSI") application. Plaintiff alleged she is disabled, beginning June 10, 2008, due to chronic lower back pain, anxiety and depression among other conditions.

Her application was denied initially on December 10, 2010 and again denied on reconsideration on February 28, 2011. A request for a hearing was made on May 19, 2011. On March 26, 2012, Plaintiff appeared at a hearing in Yakima, Washington before Administrative Law Judge ("ALJ") James W. Sherry.

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1 Vocational expert (“VE”) Trevor Duncan also participated. Plaintiff was
2 represented by attorney Jeremy D. Wallace. James Tree represents Plaintiff at this
3 Court.

4 The ALJ issued a decision on April 20, 2012 finding that Plaintiff was not
5 disabled. Plaintiff requested review by the Appeals Council, which was denied.
6 The Appeals Council’s denial of review makes the ALJ’s decision the final
7 decision of the Commissioner. 42 U.S.C. §405(h).

8 Plaintiff filed a timely appeal with the U.S. District Court for the Eastern
9 District of Washington on October 15, 2013. The instant matter is before this
10 Court pursuant to 42 U.S.C. § 405(g).

11 **II. Sequential Evaluation Process**

12 The Social Security Act defines disability as the “inability to engage in any
13 substantial gainful activity by reason of any medically determinable physical or
14 mental impairment which can be expected to result in death or which has lasted or
15 can be expected to last for a continuous period of not less than twelve months.”
16 42 U.S.C. § 423(d)(1)(A). A claimant shall be determined to be under a disability
17 only if his impairments are of such severity that the claimant is not only unable to
18 do his previous work, but cannot, considering claimant’s age, education and work
19 experiences, engage in any other substantial gainful work which exists in the
20 national economy. 42 U.S.C. §423(d)(2)(A).

21 The Commissioner has established a five-step sequential evaluation process
22 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*
23 *Yuckert*, 482 U.S. 137, 140-42 (1987).

24 Step One: Whether the claimant is engaged in substantial gainful activities.
25 20 C.F.R. § 416.920(b). Substantial gainful activity is work done for pay and
26 requires compensation above the statutory minimum. 20 C.F.R. § 416.972(a);
27 *Keyes v. Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged
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1 in substantial activity, benefits are denied. 20 C.F.R. § 416.971. If she is not, the
2 ALJ proceeds to step two.

3 Step Two: Whether the claimant has a medically-severe impairment or
4 combination of impairments. 20 C.F.R. § 416.920(c). If the claimant does not have
5 a severe impairment or combination of impairments, the disability claim is denied.
6 A severe impairment is one that lasted or must be expected to last for at least 12
7 months and must be proven through objective medical evidence. 20 C.F.R. §
8 416.909. If the impairment is severe, the evaluation proceeds to the third step.

9 Step Three: Whether the claimant's impairment meets or equals one of the
10 listed impairments acknowledged by the Commissioner to be so severe as to
11 preclude substantial gainful activity. 20 C.F.R. § 416.920(d); 20 C.F.R. § 404
12 Subpt. P. App. 1. If the impairment meets or equals one of the listed impairments,
13 the claimant is conclusively presumed to be disabled. If the impairment is not one
14 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.

15 Before considering Step Four, the ALJ must first determine the claimant's
16 residual functional capacity. 20 C.F.R. § 416.920(e). An individual's residual
17 functional capacity is her ability to do physical and mental work activities on a
18 sustained basis despite limitations from her impairments.

19 Step Four: Whether the impairment prevents the claimant from performing
20 work she has performed in the past. 20 C.F.R. § 416.920(f). If the claimant is able
21 to perform her previous work, she is not disabled. *Id.* If the claimant cannot
22 perform this work, the evaluation proceeds to the fifth and final step.

23 Step Five: Whether the claimant is able to perform other work in the
24 national economy in view of her age, education, and work experience. 20 C.F.R. §
25 416.920(g).

26 The initial burden of proof rests upon the claimant to establish a prima facie
27 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098
28 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or

1 mental impairment prevents her from engaging in her previous occupation. *Id.* At
2 step five, the burden shifts to the Commissioner to show that the claimant can
3 perform other substantial gainful activity. *Id.*

4 **III. Standard of Review**

5 The Commissioner's determination will be set aside only when the ALJ's
6 findings are based on legal error or are not supported by substantial evidence in
7 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)
8 (citing 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
9 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
10 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial
11 evidence is "such relevant evidence as a reasonable mind might accept as adequate
12 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
13 ALJ's denial of benefits if the evidence is susceptible to more than one rational
14 interpretation, one of which supports the decision of the administrative law judge.
15 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). But "[i]f the evidence
16 can support either outcome, the court may not substitute its judgment for that of
17 the ALJ." *Matney*, 981 F.2d at 1019.

18 A decision supported by substantial evidence will be set aside if the proper
19 legal standards were not applied in weighing the evidence and making the decision.
20 *Brawner v. Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir.
21 1988). An ALJ is allowed "inconsequential" errors as long as they are immaterial
22 to the ultimate nondisability determination." *Stout v. Comm'r, Soc. Sec. Admin.*,
23 454 F.3d 1050, 1055 (9th Cir. 2006).

24 **IV. Statement of Facts**

25 The facts have been presented in the administrative transcript and the ALJ's
26 decision. They will only be summarized here.

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1 At the time of the hearing, Plaintiff was forty-three years old. Plaintiff has
2 previous work experience including operating an in-home daycare, working at a
3 community college, and bartending. She has not worked since 2005.

4 Plaintiff was in a motor vehicle accident in 1999 and a bicycle accident in
5 2009. She reports frequent anxiety and has trouble going out in public or
6 interacting with other people. Plaintiff reports she was physically, sexually, and
7 emotionally abused by her parents. She also reports sexual abuse from partners.
8 Plaintiff has been diagnosed with degenerative disc disease, hypothyroidism,
9 hepatitis C, and recurrent headaches. She has also been diagnosed with depression,
10 post-traumatic stress disorder delayed onset, generalized anxiety disorder, and
11 panic disorder with agoraphobia. Plaintiff has a history of polysubstance
12 dependence including methamphetamine and cocaine use. She received inpatient
13 and outpatient treatment for substance abuse in 2000, she now reports being able
14 to stay clean and sober.

15 **V. The ALJ's findings**

16 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
17 activity since March 26, 2010, the alleged onset date. (Tr. 30.)

18 At step two, the ALJ found Plaintiff has the following severe impairments:
19 degenerative disc disease; hypothyroidism; hepatitis C; history of recurrent
20 headaches; depression; post-traumatic stress disorder; generalized anxiety disorder;
21 panic disorder with agoraphobia; psychotic disorder (not otherwise specified);
22 schizoid and avoidant personality traits; and history of polysubstance abuse and
23 dependence, in remission. (Tr. 30.)

24 At step three, the ALJ found that Plaintiff's impairments or combination of
25 impairments does not meet or medically equals the severity of one of the listed
26 impairments in 20 CFR Part 404, Subpart P, Appendix 1. (Tr. 31.)

27 The ALJ concluded that Plaintiff has the following residual
28 functional capacity ("RFC"):

1 The claimant is able to lift up to 20 pounds at a time, and can
2 frequently lift or carry 10 pounds. She can stand and/or walk for a
3 total of 6 hours in an 8-hour workday, and can sit for a total of 6
4 hours in an 8-hour workday. Pushing and pulling are unlimited within
5 the aforementioned lift and carry restrictions. The claimant can
6 occasionally stop, crouch, kneel, and climb ladders, ropes and
7 scaffolds. She can frequently crawl and climb ramps and stairs. She
8 should avoid concentrated exposure to excessive noise, excessive
9 vibration, hazards such as unprotected heights and moving machinery,
10 poorly ventilated areas, and irritants such as fumes, odors, dusts, and
11 gases. She is capable of performing simple, routine, repetitive tasks,
12 as well as well learned non-complex tasks. She is capable of low-
13 stress jobs that require occasional decisionmaking, and can adjust to
14 occasional changes in the work setting. She would need more time to
learn new work processes and procedures. She should not work with
fast-paced production requirements. She would work best away from
the general public. She is capable of superficial interaction with
coworkers in small-group settings, and superficial interaction with
supervisors. (Tr. 32-33).

15 At step four, the ALJ found Plaintiff was not capable of performing any past
16 relevant work. (Tr. 41.)

17 At step five, the ALJ found there were jobs that exist in significant numbers
18 in the national economy that Plaintiff can perform. (Tr. 41.) The ALJ relied on the
19 Medical-Vocational Guidelines and found that Plaintiff could perform light work
20 with additional limitations. Such restrictions would still allow Plaintiff to perform
21 the job of office cleaner, mail clerk, and hand packager. As a result, the ALJ
22 concluded that Plaintiff has not been under a disability, as defined in the Social
23 Security Act, since March 26, 2010.

24 **VI. Issues for Review**

25 1. Did the ALJ commit reversible error by disregarding the opinions of
26 the Claimant's treating and examining physicians?

27 2. Did the ALJ commit reversible error by dismissing the Claimant's
28 subjective complaints as not credible?

1 3. Was the ALJ's finding at step five, disregarding the opinion of the
2 vocational expert, supported by substantial evidence?

3 **VII. Discussion**

4 **1. ALJ's weighing of evidence from treating and examining**
5 **physicians**

6 Plaintiff argues the ALJ committed reversible error for failing to take into
7 account the opinions of several treating and examining physicians. Specifically,
8 Plaintiff contends the ALJ errantly gave too little weight to the opinions of Drs.
9 Roland Dougherty, Marie Ho, and Fady Sabry, and of Dick Moen and Christopher
10 Clark. An uncontradicted opinion from an examining physician must be accepted
11 by an ALJ unless he provides clear and convincing reasons to reject the opinion.
12 *Turner v. Commissioner of Social Sec.*, 613 F.3d 1217, 1222 (9th Cir. 2010)
13 (citing *Lester v. Chater*, 81 F.3d. 821, 830-31 (9th Cir. 1995). A contradicted
14 opinion of an examining doctor may only be rejected for "specific and legitimate
15 reasons." *Id.*

16 a. Dr. Dougherty

17 Plaintiff claims the ALJ "largely dismissed parts of Dr. Dougherty's
18 psychological examination" from October 2010. Plaintiff objects to the ALJ's
19 treatment of Dougherty's opinion in three specific ways. First, the ALJ found the
20 Global Assessment of Functioning ("GAF") score of forty that Dougherty
21 assigned to Plaintiff was "not consistent" with Plaintiff's functional capacity and
22 was based on factors that were not probative of mental residual functional capacity.
23 Therefore, the ALJ assigned little weight to the GAF score. Second, Plaintiff
24 complains that the ALJ noted Dougherty's observation that Plaintiff "may be
25 mildly exaggerating her symptoms" but failed to note Dougherty also described
26 Plaintiff as "not obviously malingering." Third, Plaintiff disputes the ALJ's
27 description of Dougherty's medical source statement as "somewhat vague."
28

1 Plaintiff argues the ALJ's assessment of Dougherty's GAF score was in
2 error because Dougherty simply did not specifically say what factors played a role
3 in the GAF score. Plaintiff is correct that Dougherty did not indicate the factors
4 that determined Plaintiff's GAF score, however, the ALJ's assignment of little
5 weight to the score does not constitute reversible error. Plaintiff has been assigned
6 at least three other GAF scores over a two-year period including scores of 43, 50,
7 and 60. Because Dougherty did not expand on the factors he relied upon in
8 determining the GAF score, it is impossible to know—and reasonable for the ALJ
9 to assume—the score may reflect factors irrelevant to a disability determination.
10 *See* 65 Fed. Reg. 50,746 (Aug. 21, 2000); *Doney v. Astrue*, 485 Fed.Appx. 163
11 (9th Cir. 2012); *McFarland v. Astrue*, 228 Fed.Appx. 357, 359 (9th Cir. 2008).
12 Additionally, ALJ gave reasons for rejecting the contradicted GAF score while
13 assigning more weight to parts of Dougherty's opinion that had a more direct link
14 to a disability determination. The ALJ's assignment of little weight to Dougherty's
15 GAF assessment of Plaintiff was not error.

16 Next, Plaintiff complains that ALJ noted Dougherty's observation that she
17 may have been "mildly exaggerating her symptoms" but did not note that
18 Dougherty also described her as "not obviously malingering." These two
19 descriptions, however, are not mutually exclusive. Furthermore, the ALJ simply
20 used the description as one of several reasons to assign Dougherty's assigned GAF
21 score little weight. As previously explained, the ALJ's consideration of the GAF
22 score was not reversible error. Correspondingly, the ALJ's failure to mention
23 every line of Dougherty's opinion in rejecting the GAF score is also not reversible
24 error.

25 Plaintiff also complains that the ALJ described Dougherty's medical source
26 statement as "somewhat vague" despite the lengthy report that preceded it.
27 Plaintiff misunderstands the role and significance of medical source statements. A
28 medical source statement is "[a] statement about what [a claimant] can still do

1 despite . . . impairment(s).” 20 CFR 404.1513(b). This statement is an opinion
2 submitted by a medical source based on that source’s own medical findings. Titles
3 II & Xvi: Med. Source Opinions on Issues Reserved to the Comm’r, SSR 96-5P
4 (S.S.A. July 2, 1996). In Dougherty’s case, his report consisted of eight pages, the
5 majority a history as given by Plaintiff. The report concludes with a paragraph
6 explicitly labeled “Medical Source Statement.” The statement reads:

7 Mrs. Campbell was pleasant and cooperative with me. Her social
8 skills appear to be fair. She reported being able to run a daycare for
9 10 years and did well at a work study program in college despite her
10 chronic disorders. She should be able to understand, recall, and
11 follow simple directions. Her abilities might improve with
12 appropriate medication. Tr. 246.

13 Only the latter two sentences in the statement can reasonably be described as
14 forward-looking and describing what the claimant can still do despite her
15 impairments. Dougherty’s two prospective sentences include little detail and both
16 include qualifiers rendering the sentences near meaningless. Plaintiff’s suggestion
17 that Dougherty included other relevant information is noted, however, it appears it
18 was all self-reported. Medical source statements are particularly relevant to ALJ
19 determinations because they are the opinion of an accepted medical source rather
20 than merely a regurgitation of self-reported ailments. The ALJ’s assignment of
21 Dougherty’s medical source statement “some weight” due to it being “somewhat
22 vague” and failing to give “a specific assessment of the claimant’s social
23 limitations” was based on substantial evidence and does not constitute legal error.

24 b. Dr. Ho

25 Plaintiff contends the ALJ’s assignment of Dr. Ho’s opinion “some weight”
26 was error. Plaintiff complains that the ALJ disregarded Ho’s opinion by
27 mistakenly claiming Ho did not take into account Plaintiff’s activities of daily
28 living (“ADLs”), and for dismissing Ho’s mental limitation statement as “vague
and speculative.” The ALJ also provided an additional reason for giving Ho’s

1 opinion some weight: Ho did not have an opportunity to review the whole
2 record—a record that conflicted with Ho’s finding that Plaintiff had decreased
3 sensation in her hands.

4 Plaintiff is correct that Ho had knowledge of many—though not all of—
5 Plaintiff’s ADLs. However, the ADLs that Ho did not indicate in her opinion are
6 also the ADLs that most suggest a higher functional level, such as cycling for
7 exercise and taking care of her mother.

8 Next, Plaintiff complains that the ALJ’s description of Ho’s conclusion
9 regarding Plaintiff’s mental limitations was “vague and speculative.” Ho’s
10 statement was “History of anxiety/depression, agoraphobia, panic disorder, and
11 posttraumatic stress disorder may limit her ability to function in the workplace.”
12 Tr. 258. That Plaintiff’s history “may” limit her ability to function in the
13 workplace in some unnamed manner is undoubtedly vague. Additionally, the ALJ
14 did not disagree with that statement in determining the Plaintiff’s residual
15 functioning capacity. In sum, the ALJ’s treatment of Dr. Ho’s medical opinion was
16 reasonable, based on substantial evidence, and he did not commit reversible error.

17 c. Dr. Sabry

18 Plaintiff further argues that Dr. Sabry’s opinion merited more than the “little
19 weight” the ALJ assigned. The ALJ gave little weight to Sabry’s opinion because
20 the opinion was self-contradictory. Sabry diagnosed Plaintiff with neuropathy and
21 had gross or fine motor skill restrictions despite finding she had grossly normal
22 motor skills and sensory skills. Notes from a treating or examining doctor that are
23 self-contradictory provide a clear and convincing reason for an ALJ to reject even
24 an otherwise-uncontradicted opinion. *Bayliss v. Barnhart*, 427 F. 3d 1211, 1216
25 (9th Cir. 2005). The ALJ’s treatment of Dr. Sabry’s opinion was appropriate and
26 based on substantial evidence.

1 d. Dick Moen, MSW

2 The ALJ gave Moen's second opinion—from February 2010—little weight
3 because his opinion was not tied to the mental status exam performed, he based his
4 opinion largely on Plaintiff's self-reporting, and he did not consider Plaintiff's
5 history of drug abuse. Plaintiff complains this treatment of Moen's opinion was
6 improper because the ALJ did not provide examples of disparities between the
7 mental status exam and Moen's opinion. The ALJ did not, in fact, explain how the
8 opinion and exam conflicted or how Moen should have tied the two together. This
9 would be problematic if this had been the only reason the ALJ provided in
10 assigning Moen's opinion little weight, however, the ALJ provided several other
11 legitimate reasons for his treatment of Moen's opinion. The ALJ explains that
12 Moen did not consider Plaintiff's history of drug abuse, that Moen's opinion was
13 vague, and that his medical source statement only described Plaintiff as capable of
14 "crying, writing." Tr. 39. These additional reasons, particularly Moen's
15 insufficient medical source statement, provide substantial legitimate reasons for
16 the ALJ's assignment of Moen's opinion little weight.

17 e. Christopher Clark

18 Lastly, Plaintiff argues the ALJ should have given Christopher Clark's
19 evaluation and mental status exam more weight. The ALJ assigned little weight to
20 Clark's first opinion saying it was incomplete, that the mental status exam was not
21 tied to his opinion, that the opinion was based mostly on self-reporting, and that
22 the opinion was inconsistent with Plaintiff's daily activities. Tr. 39. Plaintiff is
23 correct that Clark's first opinion does appear complete and the ALJ's proffered
24 explanation for this point is inadequate. The ALJ describes Clark's opinion as
25 incomplete because Clark provided a written assessment of Plaintiff's remote
26 memory rather than using one of the check-boxes provided. Clark's opinion was
27 not incomplete. However, the ALJ provided other, more compelling, justifications
28 in assigning Clark's opinion little weight, namely that it contradicted with the

1 Plaintiff's activities of daily life. Because the ALJ is granted deference in sorting
2 through contradicting records, his treatment of Clark's first assessment was proper,
3 even though each of the ALJ's given reasons was not individually sufficient.

4 The ALJ gave Clark's second opinion little weight because his opinion was
5 based largely on Plaintiff's self-reporting and because his assessment was based
6 partially on the "specter of undiagnosed and untreated lupus" and the fact that
7 Plaintiff had not held a job in the previous six years. Tr. 40. The ALJ deemed that
8 Clark, a licensed mental health counselor, was not properly situated to incorporate
9 an undiagnosed condition into Plaintiff's assessment. An ALJ need not give
10 meaningful weight to an opinion that is out of the examiner's scope of
11 specialization. *See Holohan v. Massanari*, 246 F.3d 1195, 1202 n.2 (9th Cir. 2001).
12 Additionally, Clark's reliance on Plaintiff's history of failing to maintain a job is
13 far less compelling when Clark did not consider Plaintiff's prior drug abuse
14 problems as a possible contributor to her failure to maintain employment. In sum,
15 the ALJ's interpretation of Clark's two opinions were supported by substantial
16 evidence and he did not commit harmful error.

17 Ultimately, the ALJ had to weigh fifteen different medical assessments that
18 often reached drastically different conclusions. The ALJ provided specific and
19 legitimate reasons supported by substantial evidence for rejecting the opinions that
20 he assigned less weight to. Therefore, the ALJ reasonably weighed the medical
21 opinion evidence and did not commit harmful error.

22 **2. ALJ's determination that Plaintiff lacked credibility**

23 The ALJ determined that some of Plaintiff's alleged symptoms were
24 consistent with the medical evidence but that some of her symptoms were not
25 credible. The ALJ gave several reasons for finding a lack of credibility. These
26 included: inconsistent reports of hallucinations and delusions without seeking
27 follow-up mental health treatment; discrepancies in Plaintiff's reporting of alcohol
28 use and abuse; failure to follow-up with Suzanne Rodriguez, MSW after such a

1 recommendation was made; and that her alleged symptoms are inconsistent with
2 some of her described daily activities.

3 In determining whether a claimant's testimony regarding symptoms is
4 credible, an ALJ must first determine if the Plaintiff has presented objective
5 medical evidence of an underlying impairment which could reasonably cause the
6 symptoms alleged. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007).
7 If there is no evidence of malingering, the ALJ can only reject the claimant's
8 testimony about her symptoms by "offering specific, clear, and convincing reasons
9 for doing so." *Id.* (internal citation omitted).

10 In this case, the ALJ determined that some of Plaintiff's medically
11 determinable impairments could reasonably cause some of the alleged symptoms.
12 Tr. 33. Although the record contains some limited suggestions of malingering, the
13 ALJ did not make any specific finding regarding malingering. The ALJ also found
14 several specific, clear and convincing reasons for not fully accepting Plaintiff's
15 symptoms as she described them in her testimony.

16 First, the ALJ found Plaintiff's daily activities were inconsistent with her
17 alleged symptoms. Tr. 37. Inconsistencies between testimony and daily activities
18 are grounds for discrediting Plaintiff's testimony, even if the activities suggest
19 some disability functioning. *Molina v. Astrue*, 674 F. 3d 1104, 1112-13 (9th Cir.
20 2012). The ALJ notes that Plaintiff's ability to cook, do chores like dishes and
21 laundry, and maintain her own budget is inconsistent with her allegations of
22 disabling limitations. Tr. 37. Additionally, Plaintiff was able to take care of her
23 mother and, at least in 2009, cycled for exercise. The ALJ reasonably found these
24 activities to be inconsistent with the complete range of alleged symptoms.

25 Second, the ALJ found that Plaintiff had made several statements to treating
26 doctors that were inconsistent with either her testimony or statements to other
27 doctors. An ALJ may use ordinary techniques of determining a claimant's
28 credibility, such as considering prior inconsistent statements. *Fair v. Bowen*, 885

1 F.2d 597, 604 n.5 (9th Cir. 1989). Here, the ALJ describes several discrepancies in
2 Plaintiff's reported alcohol use, medication use, and psychotic symptoms. Tr. 31,
3 34. The ALJ also noted that two doctors had expressed some belief that Plaintiff
4 may exaggerate symptoms. Tr. 35. These inconsistencies represent a specific, clear,
5 and convincing reason to not fully accept Plaintiff's alleged symptoms.

6 Third, the ALJ found that Plaintiff's frequent failure to seek treatment or
7 follow recommended treatment decreased Plaintiff's credibility as to alleged
8 symptoms. Tr. 34-37. An unexplained, or inadequately explained, failure to follow
9 a prescribed course of treatment or failure to seek treatment altogether constitutes
10 a form of evidence that can contribute to finding a Plaintiff not credible. *Fair*, 885
11 F.2d at 603. The ALJ noted several instances where Plaintiff failed to seek follow-
12 up treatment recommended to her, such as by Dr. Sabry (Tr. 36.) and Ms.
13 Rodriguez. Tr. 34. Plaintiff argues any failure in seeking treatment was due to her
14 lack of insurance or other ability to pay for such treatment. The ALJ, however,
15 noted that Plaintiff did not seek mental-health treatment either through emergency
16 room or low-cost clinic options. Tr. 34. Plaintiff cites *Gamble v. Chater*, for the
17 proposition that disability benefits cannot be denied on the basis that a claimant
18 did not obtain treatment she could not obtain due to lack of funds. 68 F.3d 319,
19 321 (9th Cir. 1995). *Gamble*, however, involved the determination of whether a
20 claimant was disabled due to being unable to afford a prosthesis. Here, the ALJ
21 instead uses the fact that Plaintiff did not attempt to seek any low-cost treatment as
22 one of several factors in finding that Plaintiff was not fully credible as to all of her
23 alleged symptoms. Although Plaintiff's failure to seek follow-up mental health
24 treatment is not as compelling a reason to find the claimant not credible as
25 inconsistencies in the record of Plaintiff's statements, and the conflict between the
26 alleged symptoms and Plaintiff's daily activities, it was not harmful error for the
27 ALJ to consider failure to seek treatment in his credibility determination.

1 The ALJ properly provided specific, clear, and convincing reasons for
2 finding the Plaintiff not fully credible with regard to her alleged symptoms.

3 **3. Disregarding part of the vocational expert's testimony**

4 Plaintiff contends the ALJ committed harmful reversible error by
5 disregarding the opinion of the vocational expert that Plaintiff could not sustain
6 employment. The ALJ asked the vocational expert: "[w]ould a person with the
7 limitations that [Plaintiff] described be able to perform competitive employment
8 on a regular and continuous basis?" Tr. 93. The vocational expert replied: "[a]s the
9 claimant described, no, your honor." *Id.* Plaintiff argues that the ALJ's failure to
10 consider this opinion was error.

11 The VE opinion that Plaintiff fixates on is the opinion based solely on
12 Plaintiff's self-described symptoms. As previously discussed, the ALJ properly
13 discounted some of Plaintiff's alleged symptoms as being not credible. Therefore,
14 the ALJ need not accept the VE's answer to a hypothetical based on those same
15 symptoms the ALJ already rejected. The ALJ posed other hypotheticals to the VE,
16 including one that matches the residual functioning capacity the ALJ assigned to
17 Plaintiff in his opinion. Tr. 31-32, 90-91. Accordingly, the ALJ did not commit
18 harmful reversible error by disregarding the hypothetical based on Plaintiff's self-
19 described symptoms.

20 **VIII. Conclusion**

21 The ALJ's determination was based upon substantial evidence in the record.
22 The extensive record contained medical opinions from fifteen sources and
23 contained conflicting information. The ALJ provided proper and appropriate
24 reason for balancing the various opinions. Additionally, the ALJ provided specific,
25 clear, and convincing reasons for not finding all of the claimant's self-described
26 symptoms to be credible. Based on his appropriate credibility determination, the
27 ALJ properly disregarded a hypothetical based on the self-described symptoms. In
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1 sum, the ALJ's determination was based on substantial evidence and was well
2 within the scope of deference which this Court must accord the ALJ.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. Plaintiff's Motion for Summary Judgment, ECF No. 15, is **DENIED**.

5 2. Defendant's Motion for Summary Judgment, ECF No. 18, is **GRANTED**.

6 3. The decision of the Commissioner denying benefits is **affirmed**.

7 4. The District Court Executive is directed to enter judgment in favor of
8 Defendant and against Plaintiff.

9 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
10 file this Order and provide copies to counsel.

11 **DATED** this 16th day of January 2015



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

17 Stanley A. Bastian
18 United States District Judge
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